

Letter of Findings: 40-20200368
Utilities Receipts Tax
For the Year 2016 and 2017

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

The Department disagreed with Utility Company that it was not subject to Utility Receipts Tax on connection and disconnection fees received from their utility customers; the fees constituted "gross receipts" received from utility consumers and were directly related to the provision of electric utility services to those customers.

I. Utility Receipts Tax - Connection and Disconnection Fees.

Authority: IC § 6-2.3-1-4; IC § 6-2.3-1-9; IC § 6-2.3-1-14; IC § 6-2.3-2-1; IC § 6-2.3-3-10; IC § 6-2.3-4-1; IC § 6-2.3-4-2; IC § 6-2.3-4-3; IC § 6-2.3-4-4; IC § 6-2.3-4-5; IC § 6-2.3-4-6; IC § 6-2.3-4-7; IC § 6-2.3-5-1; IC § 6-2.3-5-2; IC § 6-2.3-5-3; IC § 6-2.3-5-4; IC § 6-2.3-5-5; IC § 6-2.3-5-6; IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Hamilton Southeastern Utilities, Inc. v. Indiana Dept. of State Revenue*, 40 N.E.3d 1284 (Ind. Tax Ct. 2015); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that it is not required to pay Utility Receipt Tax on connection and disconnection fees received from its utility customers.

STATEMENT OF FACTS

Taxpayer is a utility company providing electric services to customers within Indiana and outside Indiana. The Indiana Department of Revenue ("Department") conducted a Utility Receipts Tax ("URT") audit review of Taxpayer's tax returns and business records.

The audit found that Taxpayer failed to pay URT on income attributable to connection and disconnection fees. The Department issue a proposed assessment of additional URT.

Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Utility Receipts Tax - Connection and Disconnection Fees.

DISCUSSION

The issue is whether Taxpayer has met its burden of establishing that the connection and disconnection fees it charges its customers are not subject to URT.

Because the Department's adjustment resulted in assessment of additional tax, it is Taxpayer's obligation to establish that the assessment was "wrong." All tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting their challenge that the Department's assessment is wrong.

A taxpayer that provides utility services is subject to the URT. URT is an income tax imposed on the gross receipts of a taxpayer that is a resident or domiciliary of Indiana and also on the gross receipts derived from

activities or sources within Indiana by a non-resident taxpayer. IC § 6-2.3-2-1 states:

An income tax, known as the utility receipts tax, is imposed upon the receipt of:

- (1) the *entire taxable gross receipts* of a taxpayer that is a resident or a domiciliary of Indiana; and
- (2) the taxable gross receipts derived from activities or businesses or any other sources within Indiana by a taxpayer that is not a resident or a domiciliary of Indiana. (*Emphasis added*).

"Gross receipts" for purposes of the URT is defined at IC § 6-2.3-1-4 as follows:

"Gross receipts" refers to *anything of value*, including cash or other tangible or intangible property[,], *that a taxpayer receives in consideration for the retail sale of utility services for consumption before deducting any costs incurred in providing the utility services.* (*Emphasis added*).

"Taxable gross receipts" are clearly defined under IC § 6-2.3-1-9 as follows:

"Taxable gross receipts" means the remainder of:

- (1) all gross receipts that are *not exempt* from tax under [IC 6-2.3-4](#); less
- (2) all *deductions* that are allowed under [IC 6-2.3-5](#). (*Emphasis added*).

IC § 6-2.3-4 lists seven categories of gross receipts that are exempt from URT: gross receipts from transactions with the United States government (IC § 6-2.3-4-1); gross receipts from commerce between Indiana and another state or foreign jurisdictions (IC § 6-2.3-4-2); gross receipts received by conservancy districts, regional water, sewage, or solid waste districts, nonprofits formed solely to provide water to the public, etc. (IC § 6-2.3-4-3); gross receipts from occasional sales of utility services by an entity that is not regularly engaged in selling utility services (IC § 6-2.3-4-4); gross receipts from the sale of utility services by owners or operators of commercial hotels, campgrounds, mobile home parks, and marinas (IC § 6-2.3-4-5); gross receipts from sales of utility services between members of an affiliated or controlled group (IC § 6-2.3-4-6); and lastly, gross receipts received by a taxpayer from an electricity supplier as payment for severance damages or compensation resulting from a change in assigned service area boundaries (IC § 6-2.3-4-7); as payment for severance damages or compensation resulting from a change in assigned service area boundaries (IC § 6-2.3-4-7).

IC § 6-2.3-5 lists all the deductions allowed under URT. The deductions allowed are for a standard annual deduction (IC § 6-2.3-5-1), bad debts (IC § 6-2.3-5-2), resource recovery systems if the taxpayer is allowed to take a federal depreciation deduction with respect to the resource recovery system and it processes solid or hazardous waste (IC § 6-2.3-5-3), amounts received for the return of empty containers (IC § 6-2.3-5-4), gross receipts exempted as interstate mobile telecommunications under other statutes (IC § 6-2.3-5-5), and lastly, a deduction is allowed for retail sales of bottled water or gas to the extent that the purchases were treated as retail transactions (IC § 6-2.3-5-6).

IC § 6-2.3-3-10 specifies the taxability of certain receipts:

Gross receipts include receipts received for installation, maintenance, repair, equipment, or leasing services provided to a commercial or domestic consumer that are directly related to the delivery of utility services to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service.

IC § 6-2.3-1-14 defines "utility service:"

"Utility service" means furnishing any of the following:

- (1) Electrical energy.
- (2) Natural gas, either mixed with another substance or pure, used for heat, light, cooling, or power.
- (3) Water.
- (4) Steam.
- (5) Sewage (as defined in [IC 13-11-2-200](#)).
- (6) Telecommunication services.

During the course of the audit, the Department found that Taxpayer did not include "Connection/Reconnection Earnings" as receipts subject to URT. Taxpayer cited to *Hamilton Southeastern Utilities, Inc. v. Indiana Dept. of State Revenue*, 40 N.E.3d 1284 (Ind. Tax Ct. 2015) for the proposition that connection and disconnection fees are not subject to URT.

In that case, the court found that the fees received by the utility petitioner were not subject to URT because the fees were not "'directly related' to [petitioner's] provision of sewage of utility services" because the fees were "paid by property developers, not by the consumers of its sewage utility services." *Id.* at 1289. As such, the court found that the fees were not "directly related to the delivery of utility services to the commercial or domestic consumer or the removal of equipment from a commercial or domestic consumer upon the termination of service" as required under IC § 6-2.3-3-10.

Taxpayer explains the nature of the fees here at issue:

The connection/reconnection fees are separately billed "service charges" on [Taxpayer's] customer invoices and relate to the enabling of utility service. A [Taxpayer] field technician will visit a customer location to either wirelessly start/stop the meter or flip a switch on the physical meter, and will notify the related [Taxpayer] customer of his/her presence as required by law. The connection charge is a flat fee, and reconnection and disconnection fees are based upon how service is reconnected/disconnected as well as the time of day in which the order is complete.

In other words, if an electric customer does not pay his or her bill, Taxpayer will disconnect Taxpayer's electric service and send the customer a bill for the cost of doing so. When and if the customer reconciles his or her unpaid electric bill, Taxpayer will reconnect the service and send the customer a bill for doing so.

The fees at issue here are not identical to the fees at issue in *Hamilton Southeastern*. In that case, the fees were not paid by the consumer of the utility service but were paid by "property developers." *Id.* 1289. Because the fees were not paid by the consumer, the *Hamilton Southeastern* fees were not directly related to the provision of utility service to the utility consumer. *Id.*

In Taxpayer's case, the fees at issue fall squarely with the definition of gross receipts received from utility customers as defined under IC § 6-2.3-1-4 and do not fall anywhere within the categories of excluded receipts set out in IC § 6-2.3-4 or deductions found in IC § 6-2.3-5.

FINDING

Taxpayer's protest is respectfully denied.

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